

**BOOK REVIEW SECTION**



Davis D. Joyce, Editor. *Alternative Oklahoma: Contrarian Views of the Sooner State*. (University of Oklahoma Press, 2007), pp. 249. \$19.95 ISBN 13:978-0-8061-3819-0

**The 14-edited chapters** of *Alternative Oklahoma* chronicle the state's history from the "standpoint of others." Such a point of view is modeled from historian Howard Zinn's *A People's History of the United States*, but for Oklahoma. In Davis' own words he states:

I prefer to try to tell the story of Oklahoma's prehistory from the point of view of the Spiro Mound people; of Indian removal from the view of the Cherokees; of the Civil War from the standpoint of the Seminole slaves; of the Run of '89 as seen by the Indians already there . . . (p xiv).

Davis, who also wrote a biography on Zinn, cobbles together progressive voices who tell stories of the state's overlooked and often marginalized past. The edited volume is introduced by Fred Harris, a former Oklahoma U.S. senator and presidential candidate who now teaches political science at the University of New Mexico. Harris writes in the introduction that although history is too often written by the winners and the elites, that "if we're really going to understand who we are as Oklahomans and how far we've come, we need to learn, and teach, history as it was lived by the loser, too—and those who had to fight hard to keep from losing" (p. xi). Although Davis reveals a glimpse of Oklahoma's "progressive streak," he admits that this edited volume is:

Not 'everything' your Oklahoma history text book got wrong is included herein; and some of what is included is essential material considered unworthy of inclusion in the textbooks—or too controversial (xvii).

While not even Zinn's thick 750+ pages can include a definitive American progressive history, this 249-page volume does not pretend to cover Oklahoma's either. Davis' edited volume is slanted slightly toward history as six of the fourteen contributors, including Davis himself, are historians, however, the rest of the authors are from a diverse range of disciplines: library science, sociology, English, journalism, religious studies, political science and even a community activist.

The 14 chapters cover a range of topics from Oklahoma's marginalized voices, such as pioneer women who were social historians, African- and Native-Americans, Vietnam Vets for Peace, Homosexuals, Radicals, and those who are religiously to the left. Each chapter's style is also diverse. On the one hand is Linda Reese's "'Petticoat' Historians," which is an academic exploration of women, such as well-known Angie Debo and Oklahoma Higher Education Hall of Famer Anna Lewis, both of whom pioneered Oklahoma history research. On the other hand is Roxanne Dunbar-Ortiz's "Growing up Okie—and Radical," which is an adaptation from her book *Red Dirt: Growing Up Okie*. Ortiz's chapter is a poignant memoir of growing up poor and white in Oklahoma before World War II.

Davis' edited volume can easily inspire undergraduate or graduate students to look at history and even contemporary politics in Oklahoma with more open minds and a wider lens.

John Wood  
Rose State University

Thomas, Elmer. *Forty Years a Legislator*. Richard Lowitt and Carolyn G. Hanneman, ed. (Norman, OK: University of Oklahoma Press, 2007), pp. 178. \$24.95 ISBN 978-0-8061-3809-1

**As a United States Senator** during wartime, Elmer Thomas became one of the very few American leaders trusted with the greatest secret of the twentieth century—the development of the atomic bomb. This relatively unsung hero in Oklahoma's political history is given voice anew by the remarkable efforts of Richard Lowitt and Carolyn Hanneman. Together, these two researchers combed the Senator's memoir held in safekeeping under the auspices of the Carl Albert Center at the University of Oklahoma. Thomas's original memoir is described as "a sprawling, unrevised and uncorrected 433-page typed document" covering "his life up to his retirement in 1951" (p. xv). The editors have performed a miraculous job distilling this extensive work down to its essentials.

Thomas began his lifelong association with the Oklahoma territory in unremarkable fashion. Basically, he didn't have enough funds to travel back to his home state of Indiana. So here he opened up a law practice and engaged in a series of highly profitable real estate ventures. Particularly notable was his strategic foresight in leveraging properties with the potential to channel water to the growing population and industries of a thirsty southwestern Oklahoma. These early lucrative efforts here foreshadowed his subsequent and equally successful initiative to provide irrigation in Oklahoma through the mechanisms of the national government. Borrowing from the precedent of the Tennessee

Valley Authority, Thomas would later shepherd legislation to provide flood control and water reservoirs throughout the state.

The early part of the book is an enlightening recount of the numerous efforts to successfully launch a new state against numerous hardships and obstacles. Lack of financial resources was always problematic. With more humor than he probably intended, Thomas observed the irony, "Had we known at that time that there was a vast pool of oil under the land secured [for the capitol], our financial problem would have been solved"(p.19). Various other budgetary measures and the ultimate discovery of the oil reserves under the capitol grounds helped the state with its early fiscal responsibilities.

Throughout, Thomas remains unabashedly proud of his work promoting the interests of the Indian tribes in Oklahoma. He admits that "Indians, for good reasons, are skeptical of the white man"(p. 13). His profound empathy for Indians was not necessarily aimed at preservation of their culture. This dichotomy can be seen in his statement, "Knowing of their history and the treatment accorded them by our government, I was always sympathetic to their efforts to provide educational opportunities for their children to the end that they might better protect themselves in dealing with the white man, and eventually to see their children able to take their place as full citizens of our country"(p. 15). In other words, full assimilation appears to have been Thomas's ultimate goal. Whatever his motivations, his efforts to redirect resources to Oklahoma's tribes is admirable. In one vignette, Thomas describes legislation to direct the royalties from "the Red River oil lands to the Kiowa, Comanche, and Apache Tribes of Indians"(p. 33).

As a former human resources manager, I was surprised to find out that the standard 40-hour workweek was initially intended to apply only to those in service at the American Navy Yards. Thomas notes, "That little provision of law, adopted to the 1934 bill, has become the cornerstone of the entire working movement in the United States, although at that time it was intended, as I thought, to apply only to the Navy"(p. 47). The principle of five eight-hour days gradually extended to the rest of the nation's workforce.

Thomas nonchalantly offers several comments about his political world that contemporary readers may find a bit curious. In this era of term limits at the state level and the diminishing importance of seniority at the national level, Thomas's recurring defense of the virtues of long

service in the legislature seems quaint. Also puzzling to the modern political observer is the method Thomas often uses as evidence of his legislative prowess. At various points he boasts about his verbosity in covering "30 pages of the House hearings"(p.53) or similarly, "My testimony in support of the bill covered some 30 pages of the Congressional Record"(p.34). Now at first blush it might appear that Thomas has an upper limit in his quantity of speech approximating thirty pages in written form. However, he soon reminds us that he firmly established his senatorial reputation by staging a well publicized (if not immediately successful) filibuster. Such was life before the era of sound bite. A final point of curiosity betrays the leftward leanings of Thomas. He is keenly suspicious that information not processed by an official government agency is somehow not "authentic"(pp. 66-67). Therefore, he proceeds on a long legislative quest to create an institutional basis within government to scrutinize the oil industry in order to yield information for policy analysis.

The general dryness of Thomas's memoir is prominently demonstrated when his writing is contrasted with others describing the same events. At those points in *Forty Years a Legislator* where Thomas quotes at length from others, the reader is left to conclude that the best parts of this book were written by journalists and other politicians. In fact, the last three pages of this book is one long quote from Senator Robert S. Kerr.

Notwithstanding the dry tone, the book livens up considerably in its last half. Here, Thomas describes the numerous attempts to get the Hoover administration to deal effectively with the economics of the Great Depression. As war later looms on the horizon, Thomas discovers to his dismay how inadequately prepared the military is to meet the coming challenge. In what is perhaps the single humorous line in the whole book, Thomas observes, "At El Paso, Texas, we inspected one of our cavalry camps, consisting of some five thousand men and five thousand horses, all well trained for parade purposes"(p.113). In the early summer of 1941, with the attack on Pearl Harbor less than a half year away, Thomas finds "one aircraft gun at Los Angeles" with "no one present" who "knew how to use the weapon," Coast Guard guns at San Francisco that no one could ever remember having been fired, and equipment to detect the sound of approaching hostile aircraft in Panama that no one knew how to use (p.113).

The best contribution of *Forty Years a Legislator* is the section on the "Legislative History of the Atomic Bomb." In the modern era after Vietnam and during a time when our government is still apologizing for the lack of weapons of mass destruction in Iraq, the trust placed by the legislative branch to the executive branch during the prosecution of World War II is extraordinary. Speaking about the Manhattan project, Thomas explains, "The passage by the Congress without any public comment whatever of appropriations so vast for a project, whose success no man could surely promise, was a striking demonstration of the courage and daring of the legislative branch of government . . . and in its final triumph the judgment of the Congress was vindicated" (p. 123). General Leslie Groves would subsequently remark, "I would like to put on the record a statement of my personal appreciation for the support that I got from the Congress, and particularly from this subcommittee on Appropriations, in permitting this work we were engaged to go ahead, taking the chances that each member of this committee took with his future political career on the very scanty information that we had to give you at that time" (p. 135). Thomas describes in great detail how the funds allocated to the Manhattan Project were surreptitiously embedded in legislative appropriations. Even so, Thomas is extremely proud of the legislative oversight that occurred in other areas during the war years. When defending against so-called junkets, Thomas points to several successes including a single item that "saved the government over \$1 million" (p. 138). Thomas closes his discussion of the war years by describing his visit to Germany during the final phases of the Nuremberg trials.

*Forty Years a Legislator* is a welcome contribution to the political history of Oklahoma. Like most memoirs, Thomas delivers a bit of self-serving prose (oh, and poetry too—see pp. 71-72). But this book does offer a lot in terms of political analysis. Especially worth reading in that context is the numerous legislative strategies that Thomas employs over the years. Hopefully, more of these types of volumes can be produced by this state's researchers using the treasury of information stored within the Carl Albert Center.

Brett S. Sharp  
University of Central Oklahoma



Felix S. Cohen, *On the Drafting of Tribal Constitutions*. David E. Wilkins ed., Norman, Oklahoma: University of Oklahoma Press, 2007 (unpublished memoranda 1934), pp.190. \$34.95  
ISBN 978-0-8061-3806-0

**It was November 1934**, and yet another chapter in federal Indian policy had just drawn to a close. From George Washington's Revolutionary War-era policy of accommodating Indian tribes through treaties (he needed their help), to the Supreme Court's early nineteenth-century tribal-sovereignty-protective policies, to Andrew Jackson's policies of removing eastern tribes to the West (often, Oklahoma), to the confinement-on-the-reservation policies that made famous the name of George Armstrong Custer, to the assimilationist "gentleman farmer" policies of breaking up and "allotting" the reservations, to the early-twentieth century policies of aggressive land-base encroachments and not-so benign neglect, federal Indian policy had oscillated wildly before. By 1928, the famous Merriam Report had recognized that the breakup of tribal land bases effectuated by late nineteenth-century "allotment" policies (and subsequent Hobbesian non-Indian predation) had proved disastrous to most tribal members.

But in 1933, Franklin Roosevelt appointed John Collier Commissioner of Indian Affairs, and Collier had a new vision. Convinced that both allotment (the breakup of communally-held reservations into discrete parcels more-or-less "owned" by tribal members and others *really* owned by non-Indians) and federal dominance over tribal-management matters had been counter productive, Collier was determined to end

them, and he enlisted the help of Felix S. Cohen in so doing. Cohen, who had just earned graduate degrees in philosophy (Harvard M.A. 1927, Ph.D. 1928), and law (Columbia LL.B.1931), joined the Department of Interior as an Assistant Solicitor in 1933. His task was to help draft the legislation that Collier hoped would ring in the new era.

Cohen was well-suited to the mission. A political idealist sympathetic to the plight of the underprivileged, and (as so frequently coincides with such views) a "legal realist" suspicious of legal formalism, Cohen was anything but averse to social engineering. To Cohen, Indian policy seemed a promising arena since its status quo had been generated not only by naked avarice but by *other* (sometimes well-intentioned) social engineering, the effects of which Cohen might undo. The Collier/Cohen plan would be reflected in the Indian Reorganization Act ["IRA"] that Franklin Roosevelt signed into law on June 18, 1934.

Except with respect to Oklahoma's Indian tribes (which were added to the new regime in 1936), the IRA was a sea change in federal policy. Recognizing that both the quantity and quality of lands beneficially owned by tribes and tribal members had been rather spectacularly diminished since allotment had begun in the 1880s, the IRA ended allotment and extended the federal trusteeship over lands previously allotted to tribal members; those lands were thus protected against improvident and/or exploitative sale. But equally importantly, the IRA's new policies would re-empower tribal members *governmentally* by explicitly authorizing tribes to organize and, upon majority vote and approval by the Department of the Interior, adopt tribal constitutions. Collier, Cohen, and Congress reasoned that such legislation would facilitate tribal *self-government*, lift the heavy hand of federal bureaucracy, empower tribal entrepreneurship, and make "tribal sovereignty" something more than a slogan once again.

Even before the IRA's enactment, sixty tribes had filed constitutions or documents in the nature of constitutions with the Department of Interior; the unwritten Iroquois constitution traced back to the fifteenth century, and the Cherokee, Choctaw, Chickasaw, and Osage constitutions were reduced to writing during the nineteenth. It would turn out that under their inherent sovereignty, tribes already possessed such governmental and organizational powers as the IRA sought to "give" them as a matter of federal law; the Navajos and other tribes who rejected the IRA's offer of structure (that part of the IRA was strictly voluntary)

would generate their own constitutions and/or regenerate their own governmental structures independent of the IRA's framework. But the federal-court case law clearly establishing those propositions would come later, and the issue was unsettled as of early 1934.

So to help those tribes who adopted the IRA framework and who sought federal assistance in reorganizing, the Department of the Interior prepared to lend a hand, and again came Felix Cohen to the fore. His *Basic Memorandum on the Drafting of Tribal Constitutions* was promulgated as an informal Bureau of Indian Affairs (then, "Indian Service") document on November 19, 1934. An addendum on the drafting of tribal bylaws—which remain an arcane remnant of Cohen's approach in some tribal (re-)constitutive documents to this day—followed on November 28.

Cohen's *Basic Memorandum* remained solely an internal Indian Service document, and it was never adopted as formal federal policy. The reasons behind its lack of its formal adoption remain unclear, but it may well be that Cohen's potentially-embarrassing editorializations contributed to that result. Passages such as "The whole history of the Indian Office has been one of continued encroachment upon the affairs of the tribe" (p. 55), and "It is important that the Indians give their best thought to devising ways of eliminating the spirit of selfishness and narrow partisanship which has disgraced some Indian tribal councils" (p. 96) convey some of Cohen's frank and unvarnished tone. It may also be that the sheer quantity of issues spoken to by Cohen's *Basic Memorandum*—and the diversity of the tribes it would potentially affect—counseled both Cohen and the Indian Service against promulgating a potentially exhaustive official document that might ultimately prove *too* influential among tribes, and/or too limiting of the Service's flexibility.

But serve as a guideline to the Indian Service's criteria for approving IRA tribal constitutions it did. Cohen's *Basic Memorandum* was a comprehensive one (along with his accompanying *Bylaws* memorandum, running to 171 pages as printed in the book now being reviewed). The topics it discusses—and many of the issues it sought to effectively address—are often strikingly relevant to present times, running the gamut from suggestions regarding the selection of a tribal name and statement of tribal purposes to membership qualifications, tribal governmental structure, officials' titles, the incorporation of still respected traditional forms of tribal government (not all were, or are), elections, criminal law,

tribal welfare, and individual rights.

Cohen was not a deity; while virtually all of the *issues* Cohen addressed still vex modern tribal governments in varying degrees, some of his *suggestions* would prove prescient, others not. Among the former are his suggestion for the inclusion of a "saving clause" in tribal constitutions (p. 75) so as not to constitutionally foreclose tribal exercises of power not recognized by federal law as of 1934 but that might be recognized in the future. Among the latter were Cohen's expressed preference (perhaps influenced by the New Deal's early experiences with the Supreme Court?) for one-branch tribal government (and resistance to separation-of-powers) on efficiency grounds (pp. 28-32). As experience has shown, one-branch governments are as potentially susceptible to gridlock as multibranch ones, and may be more susceptible to venality and corruption where the temptations to venality and corruption are strong.

Cohen sought mightily (if imperfectly) to be appropriately deferential to the fact that it was the *tribes'* sovereignty—not his—that he was helping to structure. Though both his work on the Indian Reorganization Act and his tribal-constitution-drafting project, he was attempting no less than to facilitate the (re)building of new worlds. While none of the resulting tribal governments proved remotely utopian (many, indeed, became dysfunctional and were replaced), Cohen's IRA and constitutional-drafting projects left Indian country better than what had gone immediately before. As John Collier would note in 1963, the post-1934 period of tribal-constitution drafting, which was accompanied by some urgency, probably reflected "the greatest number [of constitutions] ever written in an equivalent length of time in the history of the world" (p. xxiv), and while it is not always the case, sometimes, as Louis Brandeis reminded us, it is more important that a matter be settled than that it be settled right. Cohen's work helped to settle many things, and he often (if not always) helped to settle them right.

The University of Minnesota's David Wilkins rediscovered the unpublished manuscript of Cohen's *Basic Memorandum* at Yale's Beinecke Library (which holds most of Cohen's papers), and along with the (lightly edited) *Basic Memorandum* Professor Wilkins has included a helpful and well-referenced contextualizing introduction to Cohen's work. The volume being reviewed also contains (as appendices) the controversial "Model Constitution," "Model Corporate Charter," and a proposed tribal-constitutional outline, all of which were distributed

by the Indian Service to at least some tribes during 1934 and 1935. Those documents, along with Cohen's *Basic Memorandum*, will be of vast interest to all scholars in the field, and as published are sufficiently readable (sometimes, self explanatory) to be of great value to serious students of tribes and tribal governments at all levels. The University of Oklahoma Press—which has since 1932 published the enormously influential “Civilization of the American Indian” series—has with this volume begun a new series, the “American Indian Law and Policy” series, to parallel its venerable *Civilization* series. Under the insightful and energetic leadership of Professor Lindsay Robertson of the University of Oklahoma's College of Law, the new *Law and Policy* series has the promise to make an enormous contribution to the Indian-law field, and the publication of Cohen's *Basic Memorandum* as its inaugural volume only reinforces that potential.

The 550 or so Indian tribes in the United States have taken things quite far since 1934, the IRA, and Cohen's *Memorandum*. A careful reading of this book will reward the reader with historical perspectives and will spark creative thoughts about the future. I recommend it to all readers of this review.

*Dennis W. Arrow*

Oklahoma City University School of Law



Bruce A. Newman. *Against that Powerful Engine of Despotism*. (Lanham, MD: University Press of America, 2007), pp. 128. \$23.95 ISBN 0761836551

**Rare is the book** capable of lending the much needed clarity of argument against the contemporary revisionist understanding of our Constitution. Even more exceptional is the book focused upon our Bill of Rights, specifically the Fourth amendment. Bruce Newman, professor of Political Science at Western Oklahoma State College, has written such a book and none too soon.

In the wake of expanding state and federal bureaucracies, ever-divisive political ideologies promoted in classrooms, and judicial activism, a revival of public discourse on our Fourth Amendment rights is as prescient as it is timely. Lesser known than the First and Second Amendments (the Third Amendment prohibits the quartering of military personnel without the owner's consent during peacetime), the Fourth Amendment deals primarily with government searches of property and property owners. But a sentence, it reads as follows:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Private property is the hallmark of the Fourth Amendment because as The Founders understood too well, private property is the hallmark of a free society. For them, as for us, the protection of private property was crucial and in fact tantamount to our freedom. Private property means just that: a personal possession that, by virtue of private ownership, shields the citizen against the ambitions of government overreach. Newman writes:

A system of private property helps check government by limiting its scope. There is a sphere of life that government must stay out of.

If the Fourth Amendment establishes a boundary between public and private, contemporary court rulings, specifically those that deal with government searches of property, have encroached upon individual liberty. Newman writes that today,

The government has weakened protections against searches of property, especially commercial property, while expanding protections against searches in public areas.

The emergence of the “administrative warrant” is an example of government encroachment. In recent decades court rulings have been supported by the philosophy that government must expand its regulation of business for the public good. This allows government officials to obtain a search warrant without probable cause and is in stark opposition to the original understanding of the Fourth Amendment which required warrants for searches of property, even commercial property. One would even be in line with the Founders’ thinking to say that the Fourth Amendment was created to prevent warrants of the “administrative” variety.

Throughout the book, Newman provides example after example and thus gives the reader the needed philosophical contrast of argument between the original intent of The Founders and their colonial experience with the contemporary revisionist argument. His conclusion, supported by laudable scholarship is most convincing: “Justice would be better served by a return to the original understanding of the Fourth Amendment.”

Accessible to scholars and a general audience, my only concern



with this excellent book is that, at 128 pages, it leaves the reader wanting more.

Tim Weldon  
University of St. Francis

